

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	DA 04-998

COMMENTS OF FRONTIER COMMUNICATIONS COMPANIES

I. Introduction And Background.

On January 21, 2005 and February 1, 2005, the Commission invited interested parties to comment on the three petitions filed by Southern Communications Services, Inc., d/b/a Southern LINC (“Southern LINC”) seeking designation as an eligible telecommunications carrier (“ETC”) for Alabama, Florida and Georgia¹ pursuant to section 214(e)(6) of the Communications Act of 1934, as amended (“the Act”).² Southern LINC is seeking ETC designation in both non-rural and rural telephone company study areas. Frontier Communications of Alabama, LLC, Frontier Communications of the South, LLC, Frontier Communications of Lamar County, LLC, Frontier Communications of Georgia LLC, and Frontier Communications of Fairmount LLC (the

¹ Southern Communications Services, Inc., d/b/a Southern LINC Petition for Designation as an Eligible Telecommunications Carrier in the State of Alabama, CC Docket No. 96-45, filed September 14, 2004; Letter from Erin W. Emmott, counsel for Southern LINC to Marlene H. Dortch, Secretary for the FCC, dated January 12, 2005 (Alabama Supplement); Southern Communications Services, Inc., d/b/a Southern LINC Petition for Designation as an Eligible Telecommunications Carrier in the State of Florida, CC Docket No. 96-45, filed September 14, 2004; Letter from Erin W. Emmott, counsel for Southern LINC to Marlene H. Dortch, Secretary for the FCC, dated January 12, 2005 (Florida Supplement); Southern Communications Services, Inc., d/b/a Southern LINC Petition for Designation as an Eligible Telecommunications Carrier in the State of Georgia, CC Docket No. 96-45, filed September 14, 2004; Letter from Erin W. Emmott, counsel for Southern LINC to Marlene H. Dortch, Secretary for the FCC, dated January 12, 2005 (Georgia Supplement).

² 47 U.S.C. § 214(e)(6).

“Frontier Companies”)³ are rural telephone companies providing local exchange service in the area where Southern LINC is seeking ETC status. The Frontier Companies, by their attorney, respectfully submit these Comments in response to Southern LINC’s request to be designated as an ETC in their rural telephone company study areas in Alabama, Florida and Georgia.

II. Southern LINC Has Failed To Establish That Granting It ETC Status Is In The Public Interest.

Section 254(e) of the Federal Telecommunications Act provides that “only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific Federal universal service support.”⁴ Under section 214(e)(2), the Commission may, with respect to an area served by a rural telephone company, designate more than one common carrier as an ETC for a designated service area, so long as the requesting carrier meets the requirements of section 214(e)(1), including offering service throughout the service area for which designation is received, and the Commission determines that the designation is in the “public interest.”

Because Southern LINC seeks to be designated as an ETC in several rural telephone company study areas, including the Frontier Companies study areas, Southern LINC must demonstrate that it will meet the minimum criteria of Section 214(e)(1) of the Communications Act of 1934 and that designating it as an ETC in the rural telephone company study areas “is in the public interest.”⁵ A rigorous public interest examination is required to ensure that designation of a particular applicant as an ETC in a rural telephone company study area is in the

³ Frontier Communications of Alabama, LLC, Frontier Communications of the South, LLC, and Frontier Communications of Lamar County, LLC are ILECs providing local exchange service in Alabama. Frontier Communications of the South, LLC also provides service in Florida. Frontier Communications of Georgia LLC and Frontier Communications of Fairmount LLC are ILECs providing local exchange service in Georgia.

⁴ 47 U.S.C. § 254(e).

⁵ 47 U.S.C. § 214(e)(2).

public interest. As the Commission recognized in the *Virginia Cellular Order*,⁶ the public interest analysis is broader than just increased competition. The Commission explained:

*We conclude that the value of increased competition, by itself, is not sufficient to satisfy the public interest test in rural areas. Instead, in determining whether designation of a competitive ETC in a rural telephone company's service area is in the public interest, we weigh numerous factors, including the benefits of increased competitive choice, the impact of multiple designations on the universal service fund, the unique advantages and disadvantages of the competitor's service offering, any commitments made regarding quality of telephone service provided by competing providers, and the competitive ETC's ability to provide the supported services throughout the designated service area within a reasonable time frame. Further, in this Order, we impose as ongoing conditions the commitments Virginia Cellular has made on the record in this proceeding. These conditions will ensure that Virginia Cellular satisfies its obligations under section 214 of the Act. We conclude that these steps are appropriate in light of the increased frequency of petitions for competitive ETC designations and the potential impact of such designations on consumers in rural areas.*⁷

As a result, the *Virginia Cellular Order* established the following public interest criteria for consideration of an ETC request in rural areas:

- (1) The benefits of increased competitive choice
- (2) The impact of multiple designations on the Universal Service Fund
- (3) The unique advantages and disadvantages of the competitor's service offering
- (4) Any commitments made regarding quality of telephone service, and
- (5) The competitive ETC's ability to provide the supported services throughout the designated service area within a reasonable time frame

Based on the Commission's findings in the *Virginia Cellular Order*, all carriers seeking ETC status in rural areas must now comply with all of these additional requirements.

With respect to the Southern LINC ETC petition, the benefits of increased competitive choice (criteria # 1) associated with designating Southern LINC as an ETC are purely illusory.

Southern LINC asserts that designating it as an ETC will facilitate competition, but offers no

⁶ See *Federal-State Joint Board on Universal Service, Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier for the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order, FCC 03-338 (rel. Jan. 22, 2004) ("*Virginia Cellular Order*").

⁷ *Virginia Cellular Order* at para. 4.

specific facts to support this conclusion.⁸ It provides no facts specific to Frontier's study areas to demonstrate any benefits of increased competitive choices in Frontier's territory or whether the benefits of competition will be realized as a result of its provision of service in Frontier's study areas. Absent such a showing, the ETC petitions should be denied.

Similarly, a critical review of *Virginia Cellular Order* criteria # 2 regarding the impact of multiple designations on the Universal Service Fund also undermines Southern LINC's request for ETC designation. Among other things, universal service is intended to ensure that consumers in rural and high-cost areas receive quality services at rates comparable to those charged in urban areas. In many rural study areas, these goals can only be achieved through USF receipts because the costs to serve these areas are so high. Continued, predictable USF receipts are critical to ensuring investment to maintain and to upgrade critical infrastructure in rural study areas. Threats to the universal service mechanism and to receipt of universal service funds by competitive ETCs serving rural areas are important issues to be considered in determining whether designating additional ETCs in an rural telephone company's study areas is in the public interest.

With respect to the quality of telephone service (criteria # 4) and the ETC's ability to provide the supported services throughout the designated area with a reasonable time frame (criteria # 5), the Southern LINC filings fail to show that these criteria will be satisfied if Southern LINC is designated as an ETC. Southern LINC, like other ETCs, should be subject to specific time frames and service quality standards associated with providing service throughout the entire area in which they receive ETC designation. Southern LINC has failed to satisfy the

⁸ Georgia Petition at 14-15; Alabama Petition at 15-16; Florida Petition at 15-16.

“public interest” criteria established by the Commission in the *Virginia Cellular Order*.

III. Southern LINC, Similar To Other ETCs, Should Be Subject To Specific Time Frames And Service Standards Associated With Providing Service Throughout The Area In Which It Seeks To Receive ETC Designation.

Pursuant to section 214(e) of the Act, a common carrier designated as an ETC must offer and be capable of providing the services supported by the federal universal service mechanisms throughout the designated service area.⁹ The federal rules contain the same requirement that to receive universal service support, an ETC must offer the supported services throughout the service area for which ETC designation is received.¹⁰

Examination of Southern LINC’s filing leaves it unclear whether Southern LINC has satisfied the criteria established by the Commission in the *Virginia Cellular Order* and Section 214(e) of the Act associated with providing service throughout the entire area where they seek to be designated as an ETC. Southern LINC has not made any specific commitment to serve the entire area of each rural telephone company’s territory where it seeks ETC designation or to provide universal service to requesting customers within any specific time frame. The company has merely indicated that it will “attempt” to provide service to any requesting customers in the service areas in which it is designated as an ETC. If a potential customer requests service within the requested ETC area but outside its existing CMRS network coverage, Southern LINC has suggested that they will “evaluate the feasibility” of the following options to provide service: (1) modify or replace the requesting customer’s handset equipment to provide service; (2) install a roof-mounted antenna or other equipment to provide service; (3) adjust the nearest cell site to

⁹ 47 U.S.C. § 214(e)(1).

¹⁰ 47 C.F.R. 54.201(d)(1).

provide service; (4) identify and make any other adjustments that can be made to the network or customer facilities to provide service; (5) offer resold services or roaming in certain areas using another carrier's facilities to provide service; and (6) evaluate the costs of installing an additional cell site, cell extender, or repeater to provide service. If, after following these steps, Southern LINC determines that it cannot economically provide service, Southern LINC will simply notify the customer requesting service that service is not available and include that information in an annual report to be filed with the Commission detailing how many requests for service were unfulfilled for the past year.¹¹ Conspicuously absent from the explanation provided by Southern LINC is any commitment to provide service throughout the entire area in which it seeks to receive ETC designation. Instead, Southern LINC merely indicates that it will document and provide information regarding the customers they cannot economically serve in the areas where they are designated as ETCs.

The Commission and customers should neither expect nor accept lesser quality service from Southern LINC than from the other carriers designated as ETCs. Universal service support mechanisms and rules should be competitively neutral. In this context, competitive neutrality means that universal service support mechanisms and rules neither unfairly advantage nor disadvantage one provider over another, and neither unfairly nor disfavor one technology over another. ILEC ETCs are currently subject to a myriad of service quality provisioning and repair requirements that extend far beyond the general service aspirations contained in the Cellular Telecommunications & Internet Association's Consumer Code for Wireless Service.¹² ILEC

¹¹ See Georgia Petition at 10-11; Alabama Petition at 10; Florida Petition at 10.

¹² Under the CTIA Consumer Code, Southern LINC has agreed to: (1) disclose rates and terms of service to customers; (2) make available maps showing where service is generally available; (3) provide contract terms to customers and confirm changes in service; (4) allow a trial period for new service; (5) provide specific disclosures in

ETCs generally have an obligation to provide service to any customer requesting service in their ETC territory pursuant to the terms of their tariffs and cannot simply “make an effort” to provide service and submit a report “detailing how many requests for service were unfulfilled.”

In *TOPUC v. FCC*,¹³ the Fifth Circuit held that nothing in section 214(e) of the Act prohibits states from imposing additional eligibility conditions on ETCs as part of their designation process. Consistent with this holding, the Commission found in the *Virginia Cellular Order* that nothing in section 214(e) prohibits the Commission from imposing additional conditions on ETCs when such designations fall under its jurisdiction.¹⁴ To ensure competitive neutrality and avoid unfairly providing an advantage to Southern LINC, Southern LINC should have a clear obligation to provide service to requesting customers throughout the area in which they seek ETC designation. The Commission should require Southern LINC to unequivocally commit and reasonably demonstrate that they will provide universal service to any customer requesting service in the areas where they seek ETC designation. This commitment should include a specific timeframe for provisioning service in response to a customer’s request within the proposed ETC area. If Southern LINC cannot or will not provide assurance that it will offer the supported services to all requesting customers throughout the service area for which ETC designation is requested, the Commission should deny Southern LINC’s requests for ETC designation.

advertising; (6) separately identify carrier charges from taxes on billing statements; (7) provide customers the right to terminate service for changes to contract terms; (8) provide ready access to customer service; (9) promptly respond to consumer inquiries and complaints received from government agencies; and (10) abide by policies for protection of consumer privacy. See *CTIA Consumer Code for Wireless Service*.

¹³ *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 417-18 (5th Cir. 1999).

¹⁴ *Virginia Cellular Order* at fn. 141.

Alternatively, the Commission could hold the Southern LINC ETC application in abeyance. As the Commission is aware, numerous changes to the USF mechanism and changes to the services supported by universal service are being considered.¹⁵ The changes being considered could alter the eligibility requirements for being an ETC and the analytical framework applied in ETC designation proceedings, and could significantly change the workings of the USF mechanism. Under the circumstances, the Commission could wait to make a determination of whether Southern LINC should be an ETC under any modified rules.

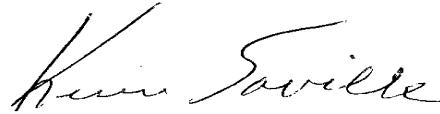
IV. CONCLUSION.

The Commission should carefully consider what, if any, benefits will be derived by consumers if it designates Southern LINC as an ETC in Georgia, Alabama and Florida. Absent the imposition of specific service provisioning conditions on Southern LINC as part of the requested ETC designations, Southern LINC will have no enforceable obligation to provide quality service throughout the entire proposed ETC territory for customers requesting service. If Southern LINC does not have an enforceable obligation to provide the supported services to all requesting customers throughout the service area for which ETC designation is requested, the Commission should deny its requests for ETC designation. Alternatively, the Commission should hold Southern LINC's ETC petition in abeyance during its pending review of the USF mechanisms and ETC eligibility requirements.

¹⁵ See, e.g., *Federal State Joint Board on Universal Service, Notice of Proposed Rulemaking*, CC Docket 96-45 (rel. June 8, 2004).

Dated February 4, 2005

Respectfully Submitted,

A handwritten signature in cursive script, reading "Kevin Saville". The signature is written in black ink and is positioned above a horizontal line.

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